IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3735 of 1988

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANUBHAI P SHAH

Versus

BANK OF BARODA, THRO' CHAIRMAN & MANAGING DIRECTOR

Appearance:

1. Special Civil Application No. 3735 of 1988

MR KM PATEL for the Petitioner

MR DARSHAN M PARIKH for Respondent No. 1

Respondents Nos. 2-4 SERVED

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 01/11/2004

ORAL JUDGEMENT

The petitioner, a former employee of the Bank of Baroda, the respondent herein (hereinafter referred to as "the Bank"), challenges the order dated 25th May, 1987 passed by the disciplinary authority, the order dated 29th August, 1987 of the appellate authority and the order dated 15th December, 1987 of the reviewing authority.

The petitioner, then an Accountant in the Bank, was charge-sheeted on 15th April, 1985 for the alleged acts of commission and omission amounting to misconduct. After holding enquiry with respect to the said memorandum of charge and the statement of allegations, the enquiry officer submitted his report on 7th March, 1986. The enquiry officer recorded finding that certain allegations were proved, certain others were partly proved and some were not proved. On the basis of the said finding he opined that "I hold that the charges levelled against Mr.K.P.Shah as per Annexure I of memorandum dated 15-4-1985 stand proved." The disciplinary authority agreed with the opinion of the enquiry officer and imposed penalty as under :

> "Shri K P Shah be and is hereby dismissed from the Bank's services from the date of this Order."

Feeling aggrieved, the petitioner preferred appeal before the appellate authority. The petitioner also submitted additional grounds of appeal. The appeal came to be dismissed on 29th August, 1987. The additional grounds as submitted by the petitioner were not considered as, according to the disciplinary authority, the same were time-barred. The reviewing authority also rejected the application made by the petitioner. Feeling aggrieved, the petitioner has preferred the present petition.

The petition came up for hearing on 23rd March, 1992 (Coram: N.J.Pandya, J. as he then was). The learned Judge had relied upon the judgment of this Court in the matter of T.S.Rabari v/s. Government of Gujarat and another [32(2) GLR 1035]. It was held that the petitioner had a right to receive the report of the enquiry officer; to make his submissions against the finding of fact recorded by the enquiry officer. In absence of the enquiry report the petitioner was deprived of the said opportunity. The impugned order was, therefore, vitiated for non-observance of principles of natural justice. The petition was accordingly allowed.

Feeling aggrieved, the Bank preferred Letters Patent Appeal No.279/1992 and Civil Application

No.1358/1992. In Civil Application No.1358/1992, on 10th July, 1992 the appellate bench (Coram: S.Nainar Sundaram, CJ. and R.K.Abichandani, J.) made order as under :

"(i) The applicants shall pay to the respondent a sum of Rs.1,00,000/- within a period of two weeks from today;

(ii) The Applicants shall pay subsistence allowance from 1.4.1992 to the resd. during the pendency of the enquiry, which we direct to be prosecuted, as infra;

(iii) The disbursements shall be without prejudice to the contentions of the parties and equities shall be worked out depending on the outcome in the Letters Patent Appeal;

(iv) The applicants are directed to prosecute the enquiry pursuant to the order of the learned single judge, subject matter of the Letters Patent Appeal; and

(v) The disbursement of Rs.1,00,000/- directed above shall be done without reference to the prosecution of the enquiry."

The Letters Patent Appeal came to be allowed on 25th November, 1993 (Coram: S.Nainar Sundaram, CJ. and M.S.Parikh, J.). While allowing the appeal, the Bench observed that, "...Any disbursement made pursuant to the interim order made pending the Letters Patent Appeal shall abide by the results in the Special Civil Application."

Learned advocate Mr.Patel has appeared for the petitioner and has submitted that the orders of the disciplinary authority, the appellate authority and the reviewing authority suffer from the vice of non-application of mind; are contrary to the principles of natural justice and fair play. He has submitted that the basic principles of natural justice have been violated. The impugned order of dismissal from service, therefore, deserves to be quashed and set aside. He has taken me through the statement of defence submitted by the petitioner, the evidence on record and the report of the enquiry officer. He has submitted that the petitioner had plausible explanation for each act of alleged misconduct. The said explanation has not been taken into consideration either by the enquiry officer or by any of the authorities below. Though the petitioner had specifically asked for a personal hearing, the appellate authority did not offer opportunity of personal hearing to the petitioner. The petitioner had submitted

his final statement of defence on 6th March, 1986. The enquiry officer submitted his report on 7th March, 1986. Thus, it is evident that the enquiry officer was biased against the petitioner. He did not take into consideration the statement of defence submitted by the petitioner and signed the enquiry report which was already prepared and ready for submission. The filing of statement of defence had thus become an empty formality which has resulted into a grave injustice to the petitioner and the miscarriage of justice. Mr.Patel has submitted that the whole enquiry started on the basis of a complaint made by the management witness one Shri Mehta, a social worker and a journalist. He has submitted that the petitioner had, in course of discharge of his duties, occasion to come in contact with the said Shri Mehta. The said Shri Mehta had filed complaint against the petitioner with a view to victimising the petitioner and to frame him up in a dubious case of illegal gratification and of acquisition of property disproportionate to the petitioner's known sources of income. Mr.Patel has also submitted that though only few of the allegations were held to be proved against the petitioner, the disciplinary authority held that all the charges levelled against the petitioner were proved. On the basis of such erroneous impression the disciplinary authority imposed punishment of dismissal from service upon the petitioner. Thus, the impugned order made by the disciplinary authority discloses a total non-application of mind. Similarly, the appellate authority and the reviewing authority also failed to consider and appreciate the evidence on record and, the explanation given by the petitioner and made/confirmed the impugned order of dismissal from service without application of mind. He has submitted that the evidence relied upon by the disciplinary authority was hearsay. Such evidence could not have been taken into consideration for holding the petitioner guilty of the charges levelled against him.

Learned advocate Mr.Parikh has appeared for the Bank and has contested the petition. He has demonstrated that the defence statement submitted by the petitioner had been taken into consideration by the disciplinary authority. Upon perusal of the said defence statement and the report of the enquiry officer, it is clearly established that the enquiry officer did take into consideration the statement of defence submitted by the petitioner. He has submitted that it is not true that the memorandum of charge made against the petitioner was not held to be proved by the enquiry officer. He has submitted that with respect to the individual allegations

the enquiry officer had recorded finding of proof or partial proof but the memorandum of charge was held to be proved as a whole. The disciplinary authority had, therefore, rightly proceeded on the footing that the memorandum of charge made against the petitioner was proved as a whole. He has submitted that considering the nature of guilt proved against the petitioner, order of dismissal from service could be the only appropriate punishment which could be imposed upon the petitioner. He has submitted that the order made by the disciplinary authority and confirmed by the appellate authority and the reviewing authority need not be interfered with by this Court.

I am afraid, I am unable to accept the contentions raised by Mr.Patel. This Court, exercising power of judicial review under Article 226 of the Constitution of India, would not be sitting in appeal over a decision of the authorities below. This Court would not re-appreciate the evidence; record finding of its own and substitute the finding recorded by the enquiry officer. The arguments advanced by Mr.Patel fall in the realm of appreciation of evidence which is not permissible in exercise of jurisdiction under Article 226 of the Constitution of India. I am unable to agree that the defence put-forth by the petitioner was not considered by the enquiry officer or by the disciplinary authority. It is also not true that the imputation of charge made against the petitioner was not held to be proved or was partially proved as contended by Mr.Patel. It is true that all the individual allegations made with respect to a particular transaction were not proved but the memorandum of charge made against the petitioner was held to be proved on the basis of the allegations that were proved against the petitioner. I do not find any justification in the demand made by Mr.Patel to remit the matter to the appellate authority or that the appellate authority should give personal audience to the petitioner. It should be noted that the opportunity of personal hearing is not the requirement of principles of natural justice. The petitioner had been given adequate opportunity of defence and his defence had been considered, though not accepted. In my view, the disciplinary proceeding having been held in consonance with the principles of natural justice and fair play and the finding of guilt having been recorded on the basis of evidence on record, no interference by this Court is warranted.

In view of the above discussion, the petition is dismissed. Rule is discharged. The petitioner will

remit the amount of Rs.1 lakh and any other amount received by him by way of subsistence allowance from 1st April, 1992 under the above referred order dated 10th July, 1992 to the Bank on or before 28th February, 2005. In the event the petitioner fails to remit the said amount within the specified period, the Bank shall be entitled to recover the same with interest @ 6% per annum. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

/sakkaf